defense, the defendant set up that he had reasonable grounds to believe, and did believe in good faith, that a divorce had been secured. *Held,* no defense. The defendant did the act prohibited by the statute and is guilty of the crime without regard to his good faith in contracting the second marriage. *Rex* v. *Wheat,* [1921], 2 K. B. 119.

The majority of American courts follow the rule as laid down in the principal case. *People* v. *Spoor,* 235 Ill. 230; *Russell* v. *State,* 66 Ark. 185; 7 CORPUS JURIS, page 1165, and cases there cited. In several American jurisdictions, however, where the statute is practically identical with the English statute, it is held that a bona fide belief on reasonable grounds that a divorce had been granted is a defense. *Squire* v. *State,* 46 Ind. 459; *Baker* v. *State,* 86 Neb. 775. These jurisdictions hold that the statute must be interpreted in the light of the common law rule that before there can be a crime there must be a guilty mind, and if one is reasonably misled by circumstances which, if true, would make the act for which the prisoner is indicted an innocent act, he is not guilty. This general principle is laid down in *Queen* v. *Tolson,* [1889], 23 Q. B. Div. 168, but the court in the principal case refused to follow it on the ground that it was not in point. In that case the defendant was indicted for bigamy under the same statute, to which there was a proviso that the act did not include any person whose husband or wife had been continually absent from home for seven years and was not known by such person to have been living within that time. Defendant's husband had been away from home for less than seven years; but the defendant, thinking her husband to be dead, married again. Defendant's former husband was in fact alive at the time. Upon indictment the court held the defendant not guilty because she bona fide and reasonably believed her husband dead. Defendant came clearly within the words of the statute, because she did marry before her former husband was in fact dead, or before she could legally consider him dead. But the court in the principal case said that the defendant in *Queen* v. *Tolson, supra,* did not intend to do the act prohibited by the statute, because she believed on reasonable grounds that her husband was dead, while the defendant in the principal case did intend to do the act prohibited by the statute, regardless of his good faith in contracting the second marriage. The distinction is difficult to see.

CRIMINAL LAW—MISTAKE OF FACT AS A DEFENSE—CRIMINAL INTENT.—The Larceny Act of 1861 provides that "Whosoever shall unlawfully and wilfully kill * * * any house dove or pigeon under such circumstances as shall not amount to larceny at common law" shall be liable to a penalty. D admitted the killing, but stated in his answer that, when he shot it, he thought the pigeon was a wild one which he might lawfully kill. *Held,* admitting statement of D to be true, it is no defense. *Horton* v. *Gwynne,* [1921], 2 K. B. 661.

The general rule is that evil intent is requisite to make an act criminal, and mistake of fact, if honest and reasonable, is a good defense. 1 BISHOP CRIM. LAW, Sec. 301; BISHOP, STATUTORY CRIMES, Secs. 132, 1022. The only serious exception to this rule is in the case of acts *mala prohibita,* where,

in the exercise of the police powers of the state, the legislature enacts a statute, for the protection of the public health, welfare or morals, merely prohibiting an otherwise lawful act without reference to intent. Even in such cases some courts read "knowingly" into the statute and permit the defense of mistake of fact. *Gordon* v. *State,* 52 Ala. 308; *Squire* v. *State,* 46 Ind. 459; *Stern* v. *State,* 53 Ga. 229; *Farrell* v. *State,* 32 Oh. St. 456; *Reg.* v. *Sleep,* 8 Cox C. C. 472. However, the trend of modern authority is towards a literal interpretation of such statutes. *People* v. *Johnson,* 288 Ill. 442; *Com.* v. *Mixer,* 207 Mass. 141, 31 L. R. A. (N. S.) 467; *Welch* v. *State,* 145 Wis. 86; *People* v. *D'Antonio,* 150 N. Y. App. Div. 109; *Walters* v. *State,* 174 Ind. 545; *People* v. *Hatinger,* 174 Mich. 333. See also *Rex* v. *Wheat,* [1921], 2 K. B. 119, and the note thereon, *supra.* But where the legislature uses the word "knowingly," "wilfully," or some other word of similar import, the cases appear to be uniform in requiring proof of guilty intent and permitting mistake of fact to excuse. *Com.* v. *Flannelly,* 81 Mass. 195; *Masters* v. *U. S.,* 42 D. C. App. 350; *State* v. *Snyder,* 44 Mo. App. 429; *Verona Central Cheese Co.* v. *Murtaugh,* 50 N. Y. 314; *Brown* v. *State,* 137 Wis. 543; *Brown* v. *State,* 43 Tex. 478; *Bonker* v. *People,* 37 Mich. 4. That the word "wilfully" as employed in statutory criminal law necessarily implies a guilty mind, see *Withers* v. *Steamboat El Paso,* 24 Mo. 204; *Brown* v. *State,* 137 Wis. 543; *Masters* v. *U. S., supra; Kendall* v. *State,* 9 Ga. App. 794. In reversing the decision of the justices in the instant case, the court say in effect that because the killing was not accidental and D admittedly shot intending to kill that particular bird, the act was both 'wilful and unlawful." The *dictum* in one case was the only authority cited. *Taylor* v. *Newman,* 4 B. & S. 89. There P's pigeons were in the habit of feeding on D's crops, and D, after giving P warning, shot one of them while so feeding, believing he had a right to do so. As a conviction was quashed in that case, Judge Mellor saying, "I think that it was not intended to apply to a case in which there was no guilty mind, and where the act was done by a person under the honest belief that he was exercising a right," it is at least doubtful authority for the conclusion arrived at by the court in the instant case. It is submitted that neither reason nor authority justifies the strict view taken by the court in refusing to admit mistake of fact, with the usual qualifications, as a defense. The statute is not in the nature of a police regulation designed in the interest of the public, and it expressly gives scope to the criminal intent.

CRIMINAL LAW—TRIALS—RECOMMENDATION OF MERCY.—An Ohio statute (Gen. Code, Sec. 12,400) provides that "whoever * * * kills another is guilty of murder in the first degree and shall be punished by death unless the jury trying the accused recommend mercy, in which case the punishment shall be imprisonment in the penitentiary during life." In a prosecution for murder in the first degree the court charged the jury "to consider and determine whether or not, *in view of all the circumstances and facts leading up to and attending the alleged homicide as disclosed by the evidence,* you should or should not make such recommendation." The charge was objected to on